

## EXPLANATORY STATEMENT

**Issued by the Authority of the Australian Fisheries Management Authority**

*Fisheries Management Act 1991*

*Southern Bluefin Tuna Fishery Management Plan 1995*

***Fisheries Management (Southern Bluefin Tuna Fishery Transfer Weighing) Determination 2023***

The *Fisheries Management (Southern Bluefin Tuna Fishery Transfer Weighing) Determination 2023* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The *Southern Bluefin Tuna Fishery Management Plan 1995* (the Plan) is made under section 17 of the *Fisheries Management Act 1991* (the Act).

Subsection 17(6)(aa) of the Act provides that a plan of management may determine or provide for AFMA to determine the fishing capacity measured, by that method or those methods permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subclause 22B.2 of the Plan requires the Australian Fisheries Management Authority (AFMA) to determine the manner in which the ‘transfer weighing’ of Southern Bluefin Tuna is to be carried out.

The Determination determines the manner in which the transfer weighing is to be carried out when an operator transfers Southern Bluefin Tuna from a tow pontoon to a farm.

### **The Fishery**

Southern Bluefin Tuna (SBT) is a highly migratory species and is widely distributed throughout waters of the southern oceans, including the Australian Fishing Zone (AFZ). Internationally, fishing for SBT is managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) of which Australia is a member. The Australian Southern Bluefin Tuna Fishery (SBT Fishery) encompasses SBT fishing operations inside the AFZ (i.e. adjacent from 3 to 200 nautical miles around Australia) and on the high seas. Aside from New South Wales, under an Offshore Constitutional Settlement (OCS) arrangement between the Commonwealth and the States/Territories, management of the SBT Fishery to the area of low water mark is the responsibility of the Commonwealth through AFMA. The Plan was amended in 2020 to implement the government’s commitment to set aside five per cent of Australia’s CCSBT allocation for recreational fishing mortality. The set aside means that up to 95 per cent of Australia’s annual CCSBT allocation will be available to the commercial sector.

The commercial SBT Fishery is managed using Statutory Fishing Rights (SFRs), which allow holders to fish for SBT within the AFZ and the high seas. The majority of SBT are caught in offshore waters adjacent to Kangaroo Island, South Australia. The fish are caught live using the purse seine method and transferred from a tow pontoon into a farm where the fish are kept for an approximate six months grow out period. The transfer weighing is conducted at the time of transfer to determine the weight of live fish transferred. This weight is used for quota decrementation purposes. The remainder of the total allowable catch is taken using longline methods, predominantly off south eastern Australia during the winter months. These fish are landed dead and weighed on registered scales. This weight is used for quota decrementation purposes. The recreational sector continues to be managed by the relevant states using bag and size limits.

## **Consultation**

The 100 fish sample has been used as the basis for calculating quota in the farm sector of the SBT Fishery since 2013.

Subclause 22B.1 of the Plan stipulates SBT must not be transferred from a tow pontoon to a farm without a transfer weighing of the fish, carried out as determined by AFMA.

Subclause 22B.2 of Plan further stipulates AFMA must determine the manner in which the transfer weighing is to be carried out. Subclause 22B.2B says the determination must set out requirements for ascertaining: (a) the number of fish transferred; and (b) the average weight of fish transferred.

With regard to consultation requirements, subclause 22B.2A requires before making a determination, AFMA must consult the Southern Bluefin Tuna Management Advisory Committee (SBTMAC).

In 2022 the Australian Southern Bluefin Tuna Industry Association requested that the weight threshold used in the transfer weighing procedure (previously 10kg) was unduly penalising industry and requested it be reviewed. SBTMAC considered this request at its September 2022 meeting. Following that meeting the Australian Bureau of Agricultural and Resource Economics and Sciences provided further analysis of the impacts of the current rule. SBTMAC considered this analysis and unanimously agreed to recommend to the AFMA Commission that the transfer weighing procedure, for the season starting 1 December 2022, specifies a 100 fish sample with a weight threshold of 8kg and a cap of 150 fish. The Commission endorsed this recommendation at its 9-10 November 2022 meeting. At its meeting in September 2023, SBTMAC recommended the revised methodology continue to be applied in 2023-2024. The Commission endorsed this recommendation and determined the transfer weighing as set out in the Determination at its 8-9 November 2023 meeting.

## **Regulation Impact Statement**

The Office of Impact Analysis (OIA) has previously identified that decisions by AFMA including the setting of a total allowable catch; setting opening and closing dates for a fishing season; and setting undercatch and overcatch provisions in a fishery, do not require a Regulation Impact Statement. Such decisions are considered to be machinery in nature and are included in an approved carve-out (OIA reference no. 14421) reflecting where AFMA is required to make decisions under current regulatory settings and follow certain procedures when making those decisions.

**Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility is attached at **Attachment B**.

Details of the Determination are set out at **Attachment A**.

## ATTACHMENT A

### **Details of the Fisheries Management (Southern Bluefin Tuna Fishery Transfer Weighing) Determination 2023**

**Section 1** Provides that the name of the Determination is the *Fisheries Management (Southern Bluefin Tuna Fishery Transfer Weighing) Determination 2023*.

**Section 2** Provides that the Determination commences on 1 December 2023.

**Section 3** Provides that the Determination ceases on 30 November 2024.

**Section 4** Provides that the Determination is made pursuant to paragraph 17(6)(aa) of the *Fisheries Management Act 1991* and under subclause 22B.2 of the *Southern Bluefin Tuna Management Plan 1995* (the Plan).

**Section 5** Provide definitions for the Determination.

Note 1 explains a number of expressions used in the Determination are defined in the definitions section of the Plan, including farm representative.

farm representative means, in relation to a farm, the holder, or a person acting for the holder, of the fish receiver permit for the farm.

**Section 6** Determines the manner in which transfer weighing is to be carried out for the purpose of subclause 22B.2 of the Plan.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Fisheries Management (Southern Bluefin Tuna Fishery Transfer Weighing) Determination 2023***

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Determination determines the transfer weighing procedure to estimate the transfer weight of Southern Bluefin Tuna for the purposes of subclause 22B.2 of the *Southern Bluefin Tuna Fishery Management Plan 1995*.

#### **Assessment of human rights implications**

As this Determination is of a mechanical nature, it does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Determination is compatible with human rights as it does not raise any human rights issues. The AFMA Commission is satisfied that the instrument is consistent with AFMA's obligation to pursue its statutory objectives.